

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOHNNY RAY FOSTER,
Appellant.

No. 2 CA-CR 2019-0129
Filed June 11, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20173361001
The Honorable Teresa Godoy, Judge Pro Tempore
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

COUNSEL

Law Offices of Thomas Jacobs, Tucson
By Thomas Jacobs
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 After a jury trial, Johnny Foster was convicted of incest, indecent exposure to a minor under fifteen, two counts of molestation of a child, and six counts of sexual conduct with a minor under fifteen. Five sexual conduct and both molestation convictions were designated dangerous crimes against children, while the sixth sexual conduct conviction was a preparatory dangerous crime against children. The trial court sentenced Foster to consecutive prison terms, including four life terms, each without the possibility of release for thirty-five years.

¶2 On appeal, counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), stating he has reviewed the record and “has not found any issue that is not frivolous.” Consistent with *State v. Clark*, 196 Ariz. 530, ¶ 30 (App. 1999), counsel has provided “a detailed factual and procedural history of the case, with citations to the record,” and has asked this court to search the record for reversible error. Foster has not filed a supplemental brief.¹

¶3 Viewed in the light most favorable to sustaining the jury’s verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2 (App. 1999), the evidence is sufficient here, *see* A.R.S. §§ 13-705(Q)(1), 13-1401, 13-1402(A), 13-1405(A), 13-1410(A), 13-3608; *see also* 1993 Ariz. Sess. Laws, ch. 33, § 1; 1990 Ariz. Sess. Laws, ch. 384, §§ 2, 4. Foster’s granddaughter, L.F., who was eleven years old at the time of trial, testified that in approximately September 2014 she had witnessed Foster “having sex” with her mother, Foster’s daughter,

¹Foster’s sister attempted to file a supplemental brief on his behalf. However, this court ordered that brief not filed because Foster had no “right to have a third party file anything on his behalf.” *See Anders*, 386 U.S. at 744 (after counsel files brief asserting no claim to raise, defendant afforded time “to raise any points that he chooses”); *Clark*, 196 Ariz. 530, ¶ 30 (“The defendant is then given the opportunity to file a brief pro per.”).

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P.F. L.F. additionally reported that Foster had committed various sexual acts against her from the ages of four to seven, and against her younger sister, K.S., during roughly the same period. Foster's niece, M.M., also testified that Foster had committed sexual acts that "got more . . . aggressive" over time against her from approximately January 1988 through January 1995, when she was between the ages of five and eleven.

¶4 The record establishes that Foster had at least two historical prior felony convictions. The sentences imposed are within the statutory limits. See A.R.S. §§ 13-703(C), (J), 13-705(A), (D), (M), 13-1402(C), 13-1405(B), 13-1410(B), 13-3608; 1993 Ariz. Sess. Laws, ch. 33, § 1; 1993 Ariz. Sess. Laws, ch. 255, § 8.

¶5 Pursuant to our obligation under *Anders*, we have searched the record for reversible error and have found none. We therefore affirm Foster's convictions and sentences.